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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,774	07/08/2003	Kevin L. Parsons	89536	7991
7590	12/15/2003		EXAMINER	
Welsh & Katz, Ltd. Eric D. Cohen 22nd Floor 120 South Riverside Plaza Chicago, IL 60606			TON, ANABEL	
			ART UNIT	PAPER NUMBER
			2875	
DATE MAILED: 12/15/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,774	PARSONS, KEVIN L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anabel M Ton	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 08 July 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-47 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,4-10,14,15,18,27-31,34,36,37,39-41,43,44,46 and 47 is/are rejected.

7) Claim(s) 3,11-13,16,17,19-22,26,32,33,35,38,42 and 45 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1,2,4,5-10,14,15,18,27-31,34,36,37,39-41,43,44,46,47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1- of U.S. Patent No. (6,357,890). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

- With regards to claims 1,36 and 43 of the instant invention, the structural limitations are disclosed in claims 1 and 17 of the '890 reference.
- Claims 2 and 37 of the instant invention discloses the same structural limitations as claim 2 of the '890 reference.
- Claim 4,39 and 46 of the instant invention discloses the same structural limitations as claim 3 of the '890 reference.

- Claim 5 of the instant invention discloses the same structural limitations as claim 19 of the '890 reference.
- Claim 6 of the instant invention discloses the same structural limitations as claim 5 of the '890 reference.
- Claim 7 of the instant invention discloses the same structural limitations as claim 6 of the '890 reference.
- Claim 8 of the instant invention discloses the same structural limitations as claim 8 of the '890 reference.
- Claims 9 and 13 of the instant invention discloses the same structural limitations as claims 7,9,10,11 and 12 of the '890 reference.
- Claim 10 of the instant invention discloses the same structural limitations as claim 13 of the '890 reference.
- Claim 11 of the instant invention discloses the same structural limitations as claim 13 of the '890 reference.
- Claim 8 of the instant invention discloses the same structural limitations as claim 8 of the '890 reference.
- Claims 14 and 27 of the instant invention discloses the same structural limitations as claims 1 and 17 of the '890 reference.
- Claims 15,34 and 42 of the instant invention discloses the same structural limitations as claim 5 of the '890 reference.
- Claim 18 of the instant invention discloses the same structural limitations as claim 5 of the '890 reference.

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- Claim 28 of the instant invention discloses the same structural limitations as claims 1,17 of the '890 reference.
- Claim 29 of the instant invention discloses the same structural limitations as claim 6 of the '890 reference.
- Claim 30 of the instant invention discloses the same structural limitations as claim 13 of the '890 reference.
- Claim 39,47 of the instant invention discloses the same structural limitations as claim 19 of the '890 reference.

***Allowable Subject Matter***

3. Claims 3,11-13,16,17,19-21,22-26,32,33,35,38,42,45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M Ton whose telephone number is (703) 305-1084. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9318.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Anabel M Ton  
Examiner  
Art Unit 2875

AMT



THOMAS M. TON  
PRIMARY EXAMINER